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No. 447

In the Supreme Court of the United States

OCTOBER TERM, 1960

VAPOR BLAST MANUFACTURING COMPANY, PETITIONER

v.

ROSS M. MADDEN, INDIVIDUALLY AND AS REGIONAL DIRECTOR OF REGION 13, OF NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The oral opinion of the District Court dismissing the petitioner's action is set forth in the appendix to the petition (Pet. 10a–15a). The opinion of the Court of Appeals affirming the District Court's order (Pet. 2a–9a) is reported at 280 F. 2d 205.

JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1960 (Pet. 1a). The petition for writ of certiorari was filed on September 28, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court below properly held that denial by officers of the National Labor Relations Board of the right to inspect affidavits underlying an unfair labor practice proceeding is not entitled to court review through a complaint in a district court for an injunction and a declaratory judgment, but only after exhaustion of administrative remedies by a review of the final order of the Board, the exclusive method provided by the National Labor Relations Act.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), and of the Board's Rules and Regulations and Statements of Procedure are set forth in an Appendix to the petition (Pet. 19a–28a).

STATEMENT

In the fall of 1958, charges alleging that the petitioner, an employer, had committed unfair labor practices in violation of the National Labor Relations Act were filed with the Board's Regional Director (Pet. 3–4).[1] He conducted an investigation of the charges, and, at his request, the petitioner submitted a statement of its position (Pet. 4). The petitioner requested the Regional Director's permission to inspect and copy the affidavits obtained from witnesses during the investigation of the charges (Pet. 4–5).

[1] The facts are derived from the petitioner's complaint in the District Court, which, in relevant part, has been set forth in the Petition.

The Regional Director denied the request and on March 24, 1959, issued a complaint based on the charges (Pet. 5, 7).

In May, 1959, the petitioner appealed to the General Counsel of the Board from the Regional Director's ruling, and also applied directly to the General Counsel for permission to inspect and copy the affidavits (Pet. 5). Both the appeal and the application were denied by the General Counsel on May 25, 1959 (Pet. 6). Board Rules and Regulations then in effect provided for production of a witness' pre-trial statement, but only after the witness had testified at the hearing (Pet. 28a).

On June 1, 1959, the day before the hearing on the unfair labor practice case was scheduled to open, the petitioner instituted the present suit against the Regional Director in the District Court. The complaint alleged that the Regional Director's refusal to permit the petitioner to examine and copy the affidavits of persons interviewed during the investigation of the case prevented the petitioner from "fully and fairly" responding to the charges or to the complaint (Pet. 7–8). The petitioner sought a declaratory judgment, an injunction against the unfair labor practice hearing, and the production of the pre-trial statements.

The District Court denied the petitioner's request for a preliminary injunction, and thereafter granted the Regional Director's motion to dismiss the complaint for lack of jurisdiction over the subject matter. The Court of Appeals affirmed this decision. Both courts regarded the case as controlled by *Myers* v.

Bethlehem Shipbuilding Corporation, 303 U.S. 41, in that the petitioner had not exhausted its administrative remedy before the Board, and the Act provided an adequate procedure whereby it might obtain review of the Board's ultimate decision in the Court of Appeals (Pet. 2a–9a, 10a–15a).[2]

ARGUMENT

The decision of the court below is correct and in accord with well-settled authority. No issue warranting review by this Court is presented.

The petitioner's basic complaint is that it was improperly denied an opportunity to examine the pretrial statements obtained by Board agents from prospective witnesses in the course of the investigation of the unfair labor practice charges filed against petitioner. The Act provides an orderly procedure whereby the petitioner could have its contention in this regard adjudicated, and it is apparently following this course (see n. 2, this page) while continuing to assert that it should also be permitted to short-circuit that procedure by means of the instant suit. Thus, the petitioner did move for disclosure of the statements in the Board's unfair labor practice proceeding; the Board denied the motion; and that ruling

[2] On January 12, 1960, the Board issued its decision in the unfair labor practice case finding that petitioner had violated certain provisions of the National Labor Relations Act. *Vapor Blast Manufacturing Co.*, 126 NLRB No. 6. In that proceeding the petitioner's motion for disclosure of the affidavits was denied. The Board's petition for enforcement of its order is now pending in the Court of Appeals for the Seventh Circuit, No. 13,149.

can be reviewed in the Court of Appeals since the final Board unfair labor practice order is before that court for enforcement under Section 10(e).[4] In these circumstances, settled principles require that the statutory procedure be exhausted and preclude its circumvention by an independent suit of the kind attempted here. *Myers* v. *Bethelehem Shipbuilding Corp.*, 303 U.S. 41; *Newport News Co.* v. *Schauffler*, 303 U.S. 54; *Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535; *Aircraft & Diesel Equipment Corp.* v. *Hirsch*, 331 U.S. 752; *Macauley* v. *Waterman S.S. Corp.*, 327 U.S. 540.[5]

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[4] It was in this manner that the identical question has been raised in other cases. See *Raser Tanning Co.* v. *National Labor Relations Board*, 276 F. 2d 80, 83 (C.A. 6), certiorari denied, 363 U.S. 830; *National Labor Relations Board* v. *Chambers Manufacturing Corp.*, 278 F. 2d 715, 716 (C.A. 5). Both of these decisions sustain the validity of the Board rule (Pet. 28a) making pre-trial statements available only after the witness has testified.

[5] The situation in *Leedom* v. *Kyne*, 358 U.S. 184 (Pet. 18–21), is distinguishable for there, unlike here, the statutory procedure did not afford an adequate means of review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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